

There has arisen the necessity of walking the fine line between preserving the peace of the community and at the same time guaranteeing the free exercise of basic constitutional rights.

Those of us who represent municipalities are increasingly concerned not only with the philosophical aspects of the civil rights movement but with the practical consequences of possible mob action stemming from civil rights demonstrations. The specter of extensive injuries and even deaths, as well as wholesale property damage arising out of possible riot situations, remains with us.

It should be emphasized, of course, that the basic problems of mob violence and riot damage are not indigenous to the civil rights movement and have nothing to do with civil rights as such. Some recent spectacular and overpublicized examples of lawlessness have used the movement as a pretext to justify what in other contexts would be nothing more nor less than the overt flouting of the law and have frequently been the work of individuals opposed to civil rights objectives. Moreover, the specific problem faced by the local community may be the result of a gang war deep in the slums or the undisciplined outbreaks of overprivileged north shore teenagers where the civil rights struggle is not an issue. Although "violence in the streets" may be a euphemistic way of discrediting the civil rights movement on the part of some, the fact remains that possible mob violence unconnected with civil rights is also very much a factor of concern.

The basic law with respect to municipal liability for mob violence and riot damage antedates the civil rights movement by many years. That movement has merely served to dramatize a potential problem which has long been with us and which may well have become acute with the concentration of urban population, even if civil rights had not become a major issue of our time.

The extent of municipal liability for mob damage has thus become more than an academic inquiry. It provides a compelling if mundane reason for prompt and effective municipal action to control riot situations. For an examination of the relevant statutes and the case law indicates clearly the extensive liability imposed on municipalities in this State for damages caused by mob violence. This liability is absolute and is not dependent on the negligence or nonfeasance of the municipality. It also seems clear that the recent legislative enactment intended to limit municipal tort liability does not offer any defense to claims arising from mob violence.

THE STATUTORY FRAMEWORK OF MUNICIPAL LIABILITY FOR RIOT DAMAGE

The preservation of the public peace is a basic responsibility of local government. Illinois municipalities enjoy specific grants of power to deal with mob violence. Section 11-5-2 of the Illinois Municipal Code (Ill. Rev. Stat. 1965, Ch. 24, § 11-5-2) specifically provides:

"The corporate authorities of each municipality may prevent or suppress riots, routs, affrays, noises, disturbances, and disorderly assemblies in any public or private place."

This language goes back to the prior Cities and Villages Act¹ and has remained basically the same since 1872. Moreover, under Section 3-11-4 of the Illinois Municipal Code (Ill. Rev. Stat. 1965, Ch. 24, § 3-11-4):

"When necessary, the mayor may call on every male inhabitant of the city over the age of 18 years, to aid in enforcing laws and ordinances. Subject to the authority of the Governor as commander-in-chief of the militia, the mayor may call out the militia to aid in suppressing riots and other disorderly conduct, or to aid in carrying into effect any law or ordinance."

Because the duty to preserve law and order and prevent mob violence is a governmental function, municipalities under the common law were free from liability for injuries resulting from mob violence.²

But Illinois, like many other states,³ has long had a statute imposing liability on municipalities for damage caused by mob violence. Originally part of the

¹ Ill. Rev. Stat. 1941, Ch. 24, § 23-58.

² *Pittsburgh Ry. v. Chicago*, 242 Ill. 178; *Chicago League Ball Club v. Chicago*, 77 Ill. App. 124; McQuillen, *Municipal Corporations* (3rd Edition) § 53.145; Antieau, *Municipal Corporation Law*, 1965, § 12.06.

³ Conn. Gen. Stat. § 7-108 (1958); Kan. Gen. Stat. Anno. § 12-201 (1949); Ky. Rev. Stat. Anno. § 411.100 (1963); La. Rev. Stat. § 33.5065 (1950); M. E. Anno. Laws Tit. 17 § 3354; Md. Code Art. 82 § 2; Mo. Rev. Stat. §§ 537.140-160 (1959); Mott. Rev. Code Anno. § 11-1503; N.H. Rev. Stat. Anno. § 31.53 (1955); N.J. Rev. Stat. § 2A 48-8; N.Y. Gen. Mun. Law § 71; Pa. Stat. Anno. Tit. 16 § 11,821 (1956); R.I. Gen. Laws Anno. § 45-15-13 (1956); S.C. Code Anno. § 16-107 (1962); Utah Code Anno. § 78-12-29 (1953); Wis. Stat. § 66.091 (1961).